

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-FIVE

Indianapolis, IN

CLARIAN HEALTH PARTNERS, INC.¹
Employer

and

Case 25-RC-10225

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL UNION NO. 103, AFL-CIO
Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held March 8-10, 2004, before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board, to determine an appropriate unit for collective bargaining.²

I. ISSUES

The Petitioner, International Union of Operating Engineers, Local Union No. 103, AFL-CIO, seeks an election within a unit comprised of skilled maintenance employees employed by Clarian Health Partners, Inc. (hereafter referred to as “the Employer” or “Clarian”), at two of

¹ The name of the Employer was amended at hearing to accurately reflect its legal name.

² Upon the entire record in this proceeding, the undersigned finds:

- a. The hearing officer's rulings made at the hearing are free from error and are hereby affirmed.
- b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
- c. The labor organization involved claims to represent certain employees of the Employer.
- d. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

its three acute care hospitals located in Indianapolis, Indiana. Indiana University Hospital (hereafter referred to as "IU") is located at 550 University Boulevard, while the other, the James Whitcomb Riley Hospital for Children (hereafter referred to as "Riley"), is located at 702 Barnhill Drive. Both facilities are located on the campus of Indiana University/Purdue University at Indianapolis (hereafter referred to as "IUPUI").

The Petitioner contends that a unit comprised of skilled maintenance employees who work at the IU and Riley hospitals is an appropriate unit since employees of these facilities share a community of interest. The Employer, however, contends that the only appropriate unit is one which includes employees who work at three hospitals, plus three employees who work at a fourth hospital. The third hospital is Methodist Hospital (hereafter referred to as "Methodist"), located at I-65 and 21st Street in Indianapolis. The fourth hospital is Wishard Memorial Hospital (hereafter referred to as "Wishard Hospital"), located at 1001 West 10th Street, Indianapolis. Wishard is owned by the Marion County Health and Hospital Corporation, an entity unrelated to the Employer.³ However, the Employer provides medical and other services to Wishard. Clarian employs a total of 12,000 employees.

IU and Riley are jointly known as the "West campus," and are located within three blocks of each other. Methodist Hospital, referred to as the "East campus," is approximately a mile away. The East and West campuses are linked by an above-ground tram system, known as the People Mover.

More specifically, the Petitioner contends that the proposed bargaining unit should be comprised of full-time and part-time employees who occupy the following job classifications: Electricians (4),⁴ Technician – Control Systems (6), HVAC Technician (10), Tech – Facilities Equipment (10), Maintenance Technician (18), Locksmith (2,) and Technician - Fire Systems (2), for a total of 52 employees.

The Employer contends that, in addition to these classifications, the following should also be included. These include positions within the Facilities Department which exist at Methodist Hospital, and positions within the Clinical Engineering and Respiratory Care and Diagnostic Services Departments which exist at all hospitals: Maintenance Technician (16), Technician – Control Systems (7), Tech – Facilities Equipment (12), HVAC Technician (11), Electrician (5), Technician – Fire Systems (2), Locksmith (1), Waste Systems Operator (1), Powerhouse Tech (1), Dispatcher (2), Facility Engineer (2), Linac Service Engineer (1); Linac Service Engineer Trainee (1), Design and Fabrication Machinist (1), Technician – Clinical Engineering Equipment Control (3), Technician – Medical Equipment Repair (2), Technician II – Medical Equipment Repair (5), Tech – Biomedical Equipment I (8),

³ The Marion County Health and Hospital Corporation is a subdivision of Marion County, the county in which Indianapolis is located.

⁴ The titles of the positions discussed throughout this decision are taken from the job description for each position, which were received into evidence as Employer exhibits. The figures in parenthesis after each job classification reflect the number of employees who occupy each classification within the unit proposed by each party.

Technician – Biomedical Equipment II (19), Technician – Biomedical Equipment III (6), Radiological Service Engineer (13), and Tech-Respiratory Care Equipment (11). Employees in these classifications and those proposed by the Petitioner together total 182.

Thus, two primary issues are in dispute: First, whether certain positions which exist at IU and Riley hospitals comprise an appropriate unit for collective bargaining, or whether only a broader unit comprised of employees of IU, Riley, and Methodist hospitals, plus three employees who work at Wishard, is appropriate; and Second, whether certain positions in addition to those sought by the Petitioner, should be included in whatever unit is found appropriate.

II. DECISION

For the reasons discussed in detail below, including the community of interest shared by the petitioned employees, it is concluded that skilled maintenance employees employed at the Employer's IU and Riley hospitals constitute a unit appropriate for purposes of collective bargaining. Included within this unit, in addition to those classifications within the Facilities Department which the parties stipulated should appropriately be included within a skilled maintenance unit, are the following classifications whose inclusion the Employer urged: Linac Service Engineer, Technician II – Medical Equipment Repair, Technician – Medical Equipment Repair, Tech – Biomedical Equipment I, Tech – Biomedical Equipment II, Tech – Biomedical Equipment III, and Radiological Service Engineer.

The following classifications are excluded from the unit found appropriate herein, because IU and Riley constitute an appropriate unit, and the job classifications do not exist at IU or Riley: Dispatcher, Facility Engineer, Technician - Powerhouse, Waste Systems Operator, Linac Service Engineer - Trainee and Design and Fabrication Machinist. Also excluded from the above unit is the single electrician who works at Methodist Hospital and who is not a member of the Facilities Department. Excluded also are the three employees who occupy the position of Radiological Service Engineer because they work exclusively at Wishard Hospital and do not share a community of interest with unit members. Two employees in the Maintenance Technician classification who work exclusively at the Employer's "Beltway" facilities⁵ are also

⁵ Although the parties did not identify each facility owned and/or operated by the Employer in addition to IU, Riley and Methodist Hospitals, the parties referred to such additional facilities as "Beltway" facilities. Employer Exhibit 55, which contains the names of facilities at which employees perform services, indicates that the following facilities are not located on the campuses of IU, Riley or Methodist Hospitals, and presumably comprise the "Beltway" facilities: Methodist Medical Plaza North; Methodist Medical Plaza South, Methodist Medical Plaza East, Southeast Health Center, Southwest Health Center, Glendale Medical Plaza, Martindale/Brightwood Health Center, Tech Teen Clinic, Peoples Health Center, Barrington Health Center, Pyramids #2, Georgetown, Eagle Highland, 8803 North Meridian, Clarian Emergency Medical Center, Brownsburg Medical Plaza, Coburn, Salvation Army – Michigan Street, George Washington Community School, Forest Manor Middle School, the Julian Center and the Colts Complex.

excluded from the above unit because they too lack a community of interest with unit members. The following classifications are also excluded from the unit because they lack the requisite skills and do not perform skilled maintenance functions: Technician - Clinical Engineering Equipment Control and Respiratory Equipment Technician.

The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time skilled maintenance employees employed by the Employer at Riley Hospital for Children located at 702 Barnhill Drive, and Indiana University Hospital located at 550 University Boulevard, Indianapolis, Indiana, including employees who occupy the positions of Electrician, Technician - Control Systems, HVAC Technician, Maintenance Technician, Tech - Facilities Equipment, Locksmith, Technician - Fire Systems, Linac Service Engineer, Technician - Medical Equipment Repair, Technician II - Medical Equipment Repair, Radiological Service Engineer, and Tech - Biomedical Equipment I, II, and III, BUT excluding all physicians, registered nurses, professional employees, technical employees, nonprofessional employees, business office clerical employees, guards and supervisors as defined by the Act, and all other employees.

The unit found appropriate herein consists of approximately 77 employees for whom no history of collective bargaining exists.

III. STATEMENT OF FACTS

A. Overview of Operations

Indiana University Hospital was founded in 1914, and the James Whitcomb Riley Hospital for Children was opened in 1924. As its name connotes, Riley provides medical services exclusively for children. These hospitals were jointly operated by Indiana University until 1997 when they merged with a third unrelated hospital, Methodist Hospital of Indiana. Clarian Health Partners, Inc. resulted. Since 1997, Clarian has owned and operated the three acute care hospitals in addition to providing a variety of other healthcare services.⁶ As itemized in footnote five, Clarian also operates a variety of free-standing medical facilities located in Indianapolis away from the IU/Riley and Methodist campuses, referred to by the parties as the "Beltway" facilities. In addition to employees whose "base location" is one of the three hospitals, some employees also work at the Beltway facilities or at Wishard Hospital. Neither party seeks to

⁶ The parties do not dispute that each of the three hospitals whose employees are the subject of the instant proceeding, are acute care hospitals.

include employees who work at these Beltway facilities in its proposed unit. None of the Employer's facilities has a history of collective bargaining.

The record indicates that certain administrative functions for all Clarian facilities are centralized. The Employer has a single board of directors, a single tax identification number, a single medicaid number, and a single license issued by the Indiana State Department of Health. Clarian is accredited by the Joint Commission for the Accreditation of Health Care Organizations (JCAHO), and that accreditation applies at all three hospitals and the Beltway facilities. In addition, Clarian shares a single website, e-mail and purchasing system. Payroll and marketing for all facilities are also centralized.

Employees of Clarian share a common employee handbook. The handbook identifies the services and benefits available to Clarian employees. These services include: barber and beauty shops, a childcare center, banking services, and employee discounts. Benefits offered to employees include: health, dental, short term disability, and life insurance. These services and benefits are offered to employees regardless of the hospital at which they work. In addition, the handbook contains employee policies in areas such as attendance, discipline and seniority which apply to all Clarian employees. One employment application exists, regardless of the facility at which the applicant is seeking employment. Job vacancies are posted not only on the Clarian website, but are also posted throughout the three hospitals. Preferential consideration in filling a vacancy is given to applicants who are current employees within the department in which the vacancy exists, regardless of the facility at which the applicant may work. Job offers are extended by either Clarian's Human Resources Department or Employment Services Department, as opposed to the particular facility where the employee will work. A pay range exists for each job classification, and this range is determined by the Compensation Department, a part of Human Resources. Each pay range applies to all employees within a given job classification, regardless of the location at which they work. Employee service credit (seniority) is calculated based upon their total length of employment with Clarian, with no distinction based upon the location at which they work. Employee job descriptions are uniform for all three facilities. New employee orientation takes place at Methodist Hospital.

Methodist is located approximately one mile from IU and Riley and is accessible by use of the "People Mover," a recently constructed overhead tram system. Travel between IU, Riley and Methodist by the use of the People Mover, takes about five minutes. The record does not identify the locations of the various Beltway facilities.

While certain administrative functions have been centralized, other functions have not, and each hospital retains substantial autonomy. The record indicates that for the most part, medical services offered by the three hospitals are not integrated. Of all the medical specialties and sub-specialties offered to the public by each hospital, only psychiatry and cardiology (previously offered independently by IU and Methodist) have been merged. Each hospital continues to offer the array of other medical services which it offered to the public prior to the creation of Clarian. In addition, it appears that each hospital has retained operational independence. Each hospital has a Chief Administrative Officer, a Chief Medical Officer, a Vice-President of Nursing, and a Facilities Manager. Although the record suggests there are Clarian staff above these local hospital managers, the only management representative above the

hospital level identified in the record is a Vice President of Human Resources. In addition, as more fully discussed below the three departments whose employees are the subject of the present proceeding, are separately assigned to either IU/Riley or Methodist, and are separately supervised.

Both permanent and temporary transfers between employees of the proposed bargaining units at issue in this proceeding, have been few. During 2003, the only year in which data exists concerning the total number of transfers involving various Clarian facilities, a total of approximately 305 employees transferred from one position to another, from one facility to another, or both.⁷ However, during 2003 there were only two transfers involving employees in the proposed bargaining units. According to testimonial evidence, most recently in February 2004, an individual transferred to Riley to become an HVAC Technician from Methodist where he had been a Technician – Facilities Equipment. In 2001, one employee transferred from his position as a Maintenance Technician at Methodist to a Locksmith position at IU/Riley. In 2000, one employee transferred from the position of HVAC Technician at IU/Riley to a Technician – Control Systems position at Methodist. The individual made another transfer in July 2002, returning to Methodist Hospital as Maintenance Technician. An employee transferred from the position of Technician – Facilities Equipment at Methodist to Riley as an Electrician, but the record is unclear as to the date of this transfer. In December, 2001, an employee transferred from the position of Technician – Control Systems at Methodist to a Fire Systems Technician at IU. Additionally, on unknown date(s) during the past two or three years three employees were involuntarily transferred from the Facilities Department to the Clinical Engineering Department because they were working on the same equipment as other employees who were already in that department.⁸ However, there is no evidence of any employees having voluntarily transferred from the Facilities Department to the Clinical Engineering Department or vice versa.

The employees whose unit placement is at issue herein are employed in one of three departments: the Facilities Department, the Clinical Engineering Department, and the Respiratory Care and Diagnostic Services Department. Each of these departments is discussed separately below.

B. The Facilities Department

1. The Undisputed Positions

The Facilities Department is responsible for the construction, maintenance, and repair of Clarian buildings and their mechanical systems.⁹ This also includes maintenance of the grounds. A Facilities Director oversees functions of the Department throughout Clarian properties, and

⁷ This figure is drawn from Employer Exhibit 13.

⁸ The record does not indicate whether these transfers between departments also involved transfers between hospitals.

⁹ The Facilities Department is also referred to by the Employer as "Plant Operations."

reporting to him are three Facilities Managers: one who is in charge of the Facilities Department located at IU, one at Riley, and a third at Methodist Hospital. At Methodist three Facilities Supervisors report to the Methodist Facilities Manager, while two comparable supervisors report to IU's Facility Manager, and two report to the Facilities Manager at Riley.¹⁰ The supervisors employed at each hospital possess supervisory authority only over those Facilities employees who are assigned to work at their respective hospitals. The record indicates, however, that occasionally a supervisor from one hospital may be asked to substitute in the absence of a supervisor at another hospital. The record does not reflect the frequency with which this occurs. The employees in the Facilities Department use an automated timekeeping system. This system requires the employee to enter a code into a telephone upon his/her arrival and departure. All Facilities employees wear a uniform consisting of gray pants and a gray striped shirt.

The parties agree that the following positions which exist within the Facilities Department at IU and Riley properly belong in a skilled maintenance unit: Maintenance Technician, Technician – Control Systems, Tech – Facilities Equipment, HVAC Technician, Electrician, Technician – Fire Systems, and Locksmith. In dispute is the proper unit placement of four additional positions within the Department: Facility Engineer, Waste Systems Operator, Technician – Powerhouse and Dispatcher.

There are 34 Maintenance Technicians, sixteen of whom work at Methodist, eight at IU, ten at Riley.¹¹ The Maintenance Technicians are assigned to work at one of the four facilities, and earn a Pay Grade 12 hourly wage.¹² These Technicians are responsible for first-response maintenance and for troubleshooting problems within building systems. The job description for the position indicates that employees in this position inspect, troubleshoot, and repair building secondary systems pertaining to plumbing, heating, ventilation, air-conditioning and electrical systems. Included among the fixtures they maintain and repair are plumbing fixtures, drains, medical gas outlets, HVAC fixtures, thermostats, fan coils, electrical fixtures, light switches, call cords and nurse call systems. Although minimum qualifications for the position require an ability to read and interpret information from blue prints, schematics and diagrams, as well as a general knowledge of building codes, no specific educational degree, license, certification, or coursework is required.

¹⁰ The parties stipulated at hearing that the following individuals are supervisors within the meaning of Section 2(11) of the Act: Ron Bounin who is Facilities Manager at Methodist, plus Supervisors Chuck Trackwell, John Delks and Bill Burgard who report to him; Frank Mora who is Facilities Manager at Riley plus Bruce Hickman and Bill Linhart, the Supervisors who report to him; and Charles Fougnes, Facilities Manager at IU, plus Tony Beverly and Dale Sutton, the Supervisors who report to him.

¹¹ There are an additional two Maintenance Technicians who are not members of the Facilities Department, and who are supervised by some other department. One Technician works at the Southwest Health Center and the other at the Peoples Health Center. The Employer does not urge the inclusion of these employees in its proposed unit.

¹² The hourly rate of pay for Pay Grade 12 ranges between \$13.22 and \$21.89.

There are 13 employees in the Technician - Control Systems position. Seven are assigned to Methodist and six are assigned to IU. No CS Technicians are assigned to Riley, and those assigned to IU also work at Riley. CS Technicians earn an hourly wage at Pay Grade 15.¹³ The employees in this classification perform preventative maintenance on and monitor building automation systems, such as the fire and security systems. According to the position's job description, CS Technicians develop programs that will enhance building automation systems and troubleshoot controls and field sensing devices, Direct Digital Control (DDC) controllers, and Field Processing Unit (FPU) panels. While there are no specific training or educational requirements for this position, the job description states that expertise in a variety of specialized areas is required, such as electrical systems, plumbing and pressurization systems, and pneumatic transport systems. The Director of the Facilities Department testified in general terms that some interaction occurs between the Technicians assigned to IU/Riley and those assigned to Methodist; however, no specific information regarding the frequency or duration of such interaction was provided.

Twenty-one employees occupy the Tech-Facilities Equipment position. Twelve are assigned to Methodist, three to IU and seven to Riley. Equipment Technicians earn a wage at Pay Grade 14.¹⁴ Equipment Technicians are responsible for the installation, troubleshooting and repair of electric, electronic, plumbing and plumbing related equipment and building systems. No specific educational level is required for this position, although it requires steris and back-flow device certification and knowledge of electrical, electronics, mechanical equipment repair, plumbing and related systems. The majority of these employees work on the day shift. The record does not indicate whether interchange or interaction occurs between the Equipment Technicians of assigned to the three hospitals, and if so, the frequency of such contact.

HVAC Technicians are responsible for the operation, installation, troubleshooting, and repair of all heating, cooling, ventilation and refrigeration-related electromechanical equipment, and HVAC systems through the hospitals. There are 21 HVAC Technicians, who are assigned to all three shifts. Eleven of the Technicians work at Methodist, four at IU and six at Riley. The HVAC Technicians earn a wage at Pay Grade 14. The position requires a universal CFC certification, but no other specific education or training is required. Like the previously discussed positions, however, a knowledge of HVAC and related systems is required. Occasionally employees at IU or Riley will work at the other facility. Methodist employees, for the most part, however, do not work outside of their own campus.

There are nine electricians, eight of whom are employed in the Facilities Department, and one in the Clinical Engineering Department.¹⁵ Of the eight electricians who work in the

¹³ Employees in Pay Grade 15 earn an hourly wage between \$16.50 and \$28.42.

¹⁴ Pay Grade 14 extends from \$14.61 to \$27.35 per hour.

¹⁵ The record reflects that the Electrician job description applies to the electricians in both departments.

Facilities Department, four are employed at Methodist, two at IU and two at Riley. The Electricians earn a wage at Pay Grade 14. The electricians are responsible for installing, maintaining, troubleshooting and repairing electrical equipment and circuits, principally but not limited to power distribution, motor control centers, and backup emergency switch gear. While an associate degree in an electrical discipline is preferred, it is not required. However, trade school coursework in electricity is required, and experience in commercial or institutional electrical equipment and circuitry. Testimony at the hearing indicates that one of the electricians has no formal training or education in the discipline but learned the trade while employed at Clarian in another classification. The record does not indicate whether electricians ever work in facilities other than that to which they are assigned.

There are four employees who occupy the Technician - Fire Systems classification. Two are assigned to Methodist and two to IU. The Fire Technicians assigned to IU are also responsible for Riley. Fire Technicians earn a wage at Pay Grade 12. Fire Technicians are responsible for troubleshooting, maintaining, testing, and repairing fire detection and suppression equipment and systems. Although the job description does not indicate any specific certification or educational requirements are necessary for hire into the position, knowledge in a variety of areas, including commercial or construction environments involving electronic fire protection and sprinkler systems is required.

There are three Locksmiths; one is assigned to each of the three facilities. The Locksmiths are paid at Pay Grade 13.¹⁶ The job description for the position states that these individuals must possess a Certified Locksmith with Training Certificate; however the record does not reflect the coursework necessary to obtain this certification. These employees work the day shift.

2. The Disputed Positions

In dispute is the proper unit placement of the remaining four classifications within the Facilities Department: Waste System Operator, Technician – Powerhouse, Dispatcher, and Facility Engineer. These positions exist only at Methodist hospital.

There is one Waste Systems Operator who works at Methodist and earns an hourly wage at Pay Grade 8.¹⁷ This is the lowest wage range earned by any of the employees discussed in this decision. The employee in this position maintains, inspects and operates certain waste process equipment. Methodist is the only facility which houses the type of equipment for which this employee is responsible.¹⁸ No specific degree, certification or license is required for this

¹⁶ The range for Pay Grade 13 is between \$14.15 and \$23.49.

¹⁷ The wage range for Pay Grade 8 is between \$10.10 and \$16.45 an hour

¹⁸ The record does not describe the type of waste processing equipment this employee operates.

position, although it does require experience in industrial, commercial or institutional maintenance. This individual works the day shift.

There is one Powerhouse Tech who works at Methodist and s/he earns a wage at a Pay Grade 14. Methodist is the only one of the three hospitals which has a back-up boiler system. The record does not reflect the type of heating/cooling systems which service IU and Riley and which employees operate and maintain those systems. The Powerhouse Technician is responsible for the operation, repair, documentation, and preventative maintenance of the powerhouse. According to the position's job description, the powerhouse system provides Methodist Hospital with utilities such as steam, heat, hot water, soft water, chilled water, domestic water, bulk oxygen, natural gas, and medical air. No specific educational or certification requirements exist for the position, although a knowledge of electrical, mechanical equipment repair and other related fields is required. The Powerhouse Technician works day shift.

There are two Dispatchers, both of whom work at Methodist. These employees earn a wage at Pay Grade 8. The Dispatchers receive incoming communications requesting maintenance services; establish priorities; and place calls or page personnel, dispatching them to specific destinations. They also answer telephone calls and relay the calls to appropriate personnel or take messages. The record does not indicate whether these Dispatchers relay work orders to all employees of the Facilities Department, or only to some of them. There are no specific educational or training requirements for this position. These employees only work during the day shift. The record does not indicate how maintenance requests or problems are conveyed to the appropriate Facilities employees who work on the second or third shifts.

There are two Facility Engineers, both of whom are employed at Methodist. These are the highest paid employees within the Facilities Department, and earn a salary comparable to Pay Grade 20, which ranges from \$51,927.32 to \$88,008.59 per year. The position requires a baccalaureate degree in mechanical or electrical engineering, plus knowledge of electrical utilities, equipment and systems; an ability to analyze and recommend systems or alterations to systems; skills for schematic and detailed design development and knowledge of all aspects of project management and administration for both design and construction phases of construction projects. According to the position's job description, the position exists to provide technical knowledge of mechanical or electrical engineering; to serve as a problem solver, troubleshooter, project manager, and engineering resource person; and to develop and execute projects to improve the reliability of utilities, equipment, and systems within the hospital. The Engineers design and develop projects identified as "in-house projects," which includes gathering data; creating schematics; and drafting specifications for the projects. They may also work on projects with consulting engineers.¹⁹

¹⁹ These employees are classified by the Employer as professional employees, and are not required to use the automated timekeeping system to record their arrival and departure from work each day. Salaried employees are designated by a job code beginning with the letter "D."

C. The Clinical Engineering Department

The Petitioner asserts that none of the job classifications within the Clinical Engineering Department should be included in its petitioned unit, while the Employer asserts that approximately 60 employees who occupy certain classifications should be included in any skilled maintenance unit found appropriate.

Until approximately three years ago, Clinical Engineering was a part of the Facilities Department. Since then it has been a self-sufficient department headed by a Director of Clinical Engineering. Six Managers report to this Director, three of whom are Operations Managers who supervise all but one of the employees whose unit placement is in dispute. A fourth manager who occupies a Clinical Engineer position appears to supervise the sole Design and Fabrication Machinist in the Department. Two of the Operations Managers each oversee three team leaders (who occupy the Tech – Biomedical Equipment III classification). As more fully discussed below, these team leaders "lead" teams of employees whose unit placement is in dispute. One of the Operations Managers supervises a Radiology Services division within the Clinical Engineering Department, and he does not have any team leaders under his supervision. A Business Manager and Project Manager also directly report to the Department's Director, but the record does not reflect whether they supervise any employees, and if so, the reason(s) the Employer does not urge the inclusion of these employees within the petitioned unit.

Although one Director oversees all functions of the Clinical Engineering Department, direct supervision of employees assigned to IU/Riley is distinct from supervision of employees assigned to Methodist. One Operations Manager supervises employees assigned to Riley and IU, while another supervises only employees assigned to Methodist. Only the Radiology Services division has a single Manager who supervises both employees at Methodist and IU/Riley. The sole Machinist works at Methodist and is separately supervised.

Management of the Clinical Engineering Department has been subcontracted to a company named Aramark. The parties are in the first year of a five-year contract. Aramark is headquartered in Philadelphia and has similar contracts with 300 to 400 hospitals nationwide. The Director of Clinical Engineering is employed by Aramark and reports to Clarian's Vice President of Operations. The Managers who supervise the employees in dispute herein, are also employed by Aramark. None of the employees, however, are employed by Aramark.

Separate monthly staff meetings are held for employees of the Department. Meetings of employees who work at IU and Riley are held at IU, while meetings for employees assigned to Methodist Hospital are conducted at Methodist. Weekly meetings comprised of all team leaders, the Operation Managers and the Department's Director are rotated between Methodist and IU. The employees at issue herein may perform their duties within their respective hospitals (where the equipment they maintain is located), or when equipment is portable, they may work on the equipment in one of three Clinical Engineering shops. One shop is located in the basement of Riley for employees assigned to that hospital; one in the basement of IU; and the shop for employees assigned to Methodist Hospital is located in a structure called the facilities building. A shop used by employees of the Facilities Department who work at Methodist also exists in the facilities building.

Those employees of the Department who are members of a team receive their daily work assignments from their respective team leaders, while other employees receive their assignments from an administrative person within the Department (whose position is unknown). The record reflects minimal interchange between employees of the Clinical Engineering Department who work at IU/Riley and those who work at Methodist. Of 21 employees supervised by one Operations Manager, only four employees assigned to IU or Riley also perform work at Methodist. All 17 of the employees supervised by a second Operations Manager work exclusively at Methodist. In the Radiology Services Division of the Department, the Linac Service Engineer who is stationed at IU also works at Methodist, and one Radiology Service Engineer assigned to IU also performs work at Methodist. Thus, only 10% of members of the Clinical Engineering Department perform services at a facility other than that to which they are assigned. In addition, the record fails to reflect the frequency and duration of this interchange. Employees of the Biomedical Engineering Department have occasional contact with members of the Facilities Department, although the record does not contain data identifying the frequency of such contact. Upon occasion a problem may occur involving a machine under the auspices of Biomedical Engineering, and during the diagnosis of the problem, the Technician may suspect that the problem lies with a utility failure (such as a failure of electricity), rather than a problem in the machine. The Facilities Department would then be contacted and an employee from that Department would determine whether a utility failure occurred. Similarly, during the installation of a new piece of equipment, an employee from Biomedical Engineering and from Facilities may work together to connect the equipment to an electrical source, or other appropriate utility.

1. The Contested Positions

It is the Employer's position that each of the following classifications should be included in a skilled maintenance unit, in addition to those urged by the Petitioner.

As previously mentioned, one Electrician is employed within the Clinical Engineering Department. He works exclusively at Methodist Hospital and his sole function is the installation, maintenance and repair of nurse call systems within the hospital. The Electrician is a member of one of the Department's teams.

The position of Design and Fabrication Machinist is also located within the Clinical Engineering Department. This employee works at a warehouse located on Stadium Drive. The Machinist earns an hourly wage at Pay Grade 13. The Machinist is responsible for specialized design and fabrication needs of the Clinical Engineering Department, including complex medical equipment. He programs and operates such equipment as CNC controlled mills, grinders, drill presses, arbor presses, lathes, surface grinders and uses assorted hand tools. The Machinist aids in the design, service, repair, testing, installation and maintenance of biomedical related equipment and peripherals, including the mechanical design of various types of equipment such as patient electrodes, surgical tools and equipment mounting systems. Although no specific educational requirements exist for the position, it does require knowledge in a variety of areas, including the ability to organize and operate a machine shop. Work assignments are given to the Machinist on an ad-hoc basis from members of the department who are in need of his skills. It

appears that the Machinist is supervised by a Clinical Engineer who directly reports to the Department's Director.

Of the three Technician - Clinical Engineering Equipment Control positions, two are located at IU and one at Riley. Employees in this position are paid at Pay Grade 14. Apparently there is no comparable position at Methodist Hospital. These employees track and distribute medical equipment throughout the IU/Riley hospitals. They act as a liaison between nursing units and Clinical Engineering, and supply the nursing units with equipment they need plus accessories such as hoses and cables. According to the testimony of an Operations Manager in the Clinical Engineering department, these employees also perform preventative maintenance and minor repairs on least-complex clinical equipment, such as hypothermia units. The employees use basic hand tools such as screwdrivers, wrenches, and socket wrenches. The position does not require any specific education or training, although it does require familiarity with basic hand and machine tools, soldering and other test equipment. The Operations Manager estimated that an individual could achieve a command of the functions performed by the Equipment Control Technicians within six months. These Technicians generally do not have any interaction with employees of the Facilities Department.

There are two Technician - Medical Equipment Repair positions. Employees in this position earn a wage at Pay Grade 12. One position exists at Methodist and the other at Riley. This is an entry level position in the two-step classification series involving Medical Equipment Repair. The employees in this position are responsible for the preventative maintenance and repair of a variety of less complex electric, mechanical and electromechanical patient care equipment and systems. Included among the equipment they maintain are patient beds and other furniture, wheelchairs, cribs, stretchers, exam tables, hypo-hyperthermia machines, suction regulators, aspirators, sphygmomanometers, otoscopes, ophthalmoscopes, hyperbilirubinemia therapy equipment, datacard imprinters/makers and nurse call systems. Although there are no specific educational requirements for this position, minimum qualifications include a thorough knowledge of electronics and electromechanics; an ability to interpret blueprints, schematics and service manuals; prior experience with electronic equipment maintenance, troubleshooting and repair, the ability to work with a minimum of supervision; and the ability to exercise independent judgment.

Five employees occupy the position of Technician II - Medical Equipment Repair. They earn an hourly wage in Pay Grade 14. Two of these positions are at Methodist and three at IU. The IU employees also service the equipment at Riley. According to the testimony of an Operations Manager, the primary difference between the Technician and Technician II positions is that Technician II's possess the skill and ability to perform maintenance and repairs on sterilization equipment. These employees generally acquire this knowledge by attending courses provided by the sterilization vendors. Generally this is a one-week course. Between 85% and 90% of the time of Technician II's is spent working on sterilization equipment. In addition to this work, however, they are capable of repairing a variety of other clinical and non-clinical electric, electronic, mechanical and electromechanical equipment. There are no specific educational or training requirements for this position. However, the position requires a thorough knowledge of electronics, electro mechanics, sterilization processes and procedures; prior experience with electronic equipment maintenance and repair; the ability to work with a

minimum amount of supervision; and the ability to exercise independent judgment. The record does not reflect the method by which these employees receive their work assignments.

There are eight Tech - Biomedical Equipment I positions. The position's wage range is Pay Grade 13. Five of these positions are at Methodist, one at IU and two at Riley. This is the entry-level position in the three-step Biomedical Technician classification series. These employees perform preventative maintenance, repairs, tests, and calibrations on a variety of general medical equipment and devices. This includes both patient care and non-patient care equipment. According to an Operations Manager in the Department, the complexity of the equipment maintained by the Biomedical Technician series of classifications ranges from infusion pumps, to physiological monitoring systems, electronic thermometers, blood pressure cuffs, dialysis equipment, electroencephalographs, defibrillators, and a variety of other equipment. The Technician I classification deals with the least complex of equipment such as defibrillators, physiological monitors, thermometers and blood-pressure monitors. An associates degree in Electronics Technology, Electrical Engineering Technology, or Biomedical Electronics is preferred for this position. One year of military training in these fields plus two years of experience, or an equivalent combination of education and military training may be substituted for the degree. The record reflects that these individuals receive work assignments from their team leader. None of the employees in the three Biomedical Technician positions wear uniforms, and are usually attired in "scrubs" and a lab coat or a shirt and tie. Because the Biomedical Technicians generally repair equipment used in the diagnosis and treatment of patients, and since this equipment is often not portable, they frequently work in patient-care areas of the hospitals.

There are 19 Technician - Biomedical Equipment II positions which the Employer contends should be included in the petitioned unit. Employees in this position earn a wage in Pay Grade 15. Eight of the positions are located at Methodist, six at IU and five at Riley. This is the intermediate position in the Biomedical Technician series. The duties involve a higher skill and complexity level than the Technician I duties, and a minimum of two years of experience as a Technician I is required for promotion to II position. The Technician II is responsible for the repair, testing, calibration, and preventative maintenance of complex biomedical, electronic, and computer-based patient care equipment and systems. The minimum qualifications for this position are similar to those of the Technician I position, plus two years of experience performing the duties of a Technician I. These employees also receive their work assignments from their team leaders.

Six Technician - Biomedical Equipment III positions exist. Employees in these positions serve as team leaders and they report to one of three Operations Managers in the Department. Teams range in size from two to nine employees. Employees in the Technician III position earn a wage in Pay Grade 17. Five of the positions are at Methodist, with the remaining position assigned to both IU and Riley. According to its job description, incumbents in this position must be able to maintain and repair all of the Employer's biomedical equipment and systems. In addition, the Technician III serves as a resource for lower level Biomedical Technicians. They maintain preventative maintenance schedules on equipment under their auspices; they initiate and complete special projects; and initiate and coordinate vendor installations. The job description further indicates that Technician III's are the Employer's front line contact with

outside salespersons, field service representatives, and factory support personnel. The Technicians review service contracts; verify vendor performance; and make recommendations regarding potential future contracts. They evaluate the ease of use, serviceability, and general integrity of new biomedical equipment considered for purchase. The Technicians prioritize preventative maintenance and repairs and monitor monthly preventative maintenance schedules in accordance with departmental policies and procedures. According to the testimony of Department's Director, Technician III's spend between 10 and 15% of their time performing equipment maintenance and repair. The remainder of their time is spent in scheduling, compiling preventative maintenance lists, and working with outside vendors. An associate degree in Electronics Technology, Electrical Engineering Technology or Biomedical Electronics and five years of experience in a health care setting is preferred. Minimum qualifications also require a CBET certification. The certification requires that the employee successfully complete an examination administered by a national society. Each Technician III distributes work assignments to the lower level Biomedical Technicians who are members of his/her team. Team members submit requests for time off to the Technician III who leads their team, and s/he forwards the requests to their Operations Manager with a recommendation. According to the testimony of one of the Operations Managers, he generally adopts the recommendations of his Technician III's in determining whether to approve time off requests. Additionally, the record reflects that Technician III's can redesign work flow within their team without the necessity of prior approval from the Operations Manager. The Technicians prioritize work which needs to be accomplished and distribute this work among the members of their teams.²⁰

2. Radiology Services

Radiology Services is a division of the Clinical Engineering Department and is overseen by an Operations Manager who reports to the Department's Director. The Manager supervises the 15 employees whose unit placement is in dispute. It is the Employer's position that certain positions within this division should be included within the petitioned unit.

There is one Linac Service Engineer position within Radiology Services, and he is located at IU. This is a salaried position and the salary is equivalent to Pay Grade 20, the highest hourly wage earned by employees who are the subject of this decision. The Linac Engineer performs preventative maintenance and emergency repairs, and tests and inspects the linear accelerators which are located in the hospital's Radiation Oncology Department. Although the Engineer's primary work assignment is at IU, he also services the accelerator(s) located at Methodist. These machines provide radiation therapy to cancer patients. There is no specific education or training requirements for this position, although its job description indicates that the position requires previous experience with accelerators and simulators; a knowledge of radiation safety and protection; and an understanding of computer, electronic, pneumatic, hydraulic, mechanical and electro-mechanical systems. However, these employees receive service courses from manufacturers regarding the repair and maintenance of this equipment.

²⁰ Neither party contends that the Biomedical Technician III's are supervisors within the meaning of the Act, nor is there sufficient record evidence to establish such status.

There is one Linac Service Engineer Trainee who is located at Methodist. This position earns an hourly wage at Pay Grade 17.²¹ However, the incumbent in this position is only paid this rate while performing Linac functions. The incumbent is a Biomedical Equipment Technician who is in training to become a Linac Engineer, and approximately 20% of his time is spent in learning Linac functions.

There are 13 Radiological Service Engineers. Five Engineers are assigned to Methodist; five are assigned to IU; and the remaining three are located at Wishard Hospital.²² No Radiological Engineers are assigned to Riley, since that hospital is serviced by the Engineers who work at IU. The Engineers earn a salary comparable to the range of Pay Grade 20. The Engineers are responsible for the repair, maintenance, and certification of radiological imaging equipment. This includes x-ray machines, CT machines, CAT scanners, magnetic resonance imaging machines, and ultrasound machines. They modify, design, and construct interfaces and reprogram software components; install and relocate equipment; identify and recommend supply needs; coordinate the use of external repair/supply services; and serve as a technical resource persons. The Engineers also design maintenance procedures and perform equipment inspections to minimize equipment downtime. The position requires, at a minimum, an associate degree or related training in electronics; an ability to operate with a high degree of independence; and a knowledge of the theories and practices of electronic engineering and radiologic imaging. The record does not reflect how these employees receive their work assignments. It is unclear who directly supervises the Radiological Engineers, Linac Service Engineer, and the Linac Service Engineer Trainee.

D. The Respiratory Care and Diagnostic Services Department

Overall management of the Employer's Respiratory Care and Diagnostic Services Department rests with its Director, to whom eight Managers report. There is a Manager in charge of each of the three hospitals. There are eleven Respiratory Care Equipment Technicians who work within this Department and whose unit inclusion is urged by the Employer. The record does not identify the other job classifications in this Department. Four of the disputed Technicians are assigned to Methodist, three to IU, and four to Riley.²³ The Technicians are paid at Pay Grade 8. These employees are responsible for processing respiratory equipment used to treat patients. Their duties include cleaning, disinfecting, assembling, testing equipment for

²¹ Pay grade 17 are paid an hourly rate between \$19.45 and \$32.68.

²² Clarian provides three Radiological Service Engineers to Wishard Hospital, and Wishard reimburses Clarian for their wages. Although these Engineers are directly supervised by Wishard personnel, they are subject to the same terms and conditions of employment as other Clarian employees. The Employer is not asserting a joint employment relationship exists with Wishard.

²³ An exhibit submitted by the Employer which identifies the Technicians and the locations to which they are assigned appears to use the designation "UH" instead of "IU" to refer to Indiana University Hospital.

proper function, troubleshooting and minor repairs. These functions are performed after a patient has used a machine or piece of equipment, to ready it for use by another patient. If a piece of equipment requires major repairs, it is sent to the factory or elsewhere. There are no specific educational or training requirements for this position. Employees are provided on-the-job training, and according to the Employer's Senior Vice President for Nursing and Patient Care, an individual can become fully trained in two months. However, unlike other positions in the proposed bargaining unit, these employees are required to know CPR. Respiratory Care Equipment Technicians receive their job assignments from their immediate supervisors within the department. Unlike the other job classifications, this department is directly involved in patient care and treatment. While these employees wear uniforms, it is unclear whether or not they are the same uniforms worn by employees in the Facilities Department. Testimony indicates that these employees may work at facilities other than the one to which they are assigned; however, the record is unclear concerning the circumstances and frequency with which they occurs. The record does not identify the shifts these employees work. The Respiratory Care Equipment Technicians are indirectly supervised by the Director of the Respiratory Therapy Department, and directly supervised by one of two supervisors within the Department.

IV. DISCUSSION

A. Unit Scope

Under Section 9(b) of the Act, the Board has broad discretion to determine "the unit appropriate for the purposes of collective bargaining" in each case "in order to assure to employees the fullest freedom in exercising the rights guaranteed by the Act," NLRB v. Action Automotive, Inc., 469 U.S. 490, 494-97 (1985). The Board's discretion extends to selecting an appropriate unit from the range of units which may be appropriate in any given factual setting; it need not choose the most appropriate unit, American Hospital Association v. NLRB, 499 U.S. 606, 610 (1991); P.J. Dick Contracting, Inc., 290 NLRB 150, 151 (1988).

Where, as here, both parties seek multi-facility units but disagree upon which groups of employees comprise an appropriate unit, and where there is an absence of bargaining history, the Board applies a traditional community-of-interest analysis, Florida Casino Cruises, Inc., 322 NLRB 857, 858 (1997). Among the factors considered by the Board are geographic proximity of the facilities, the degree of local autonomy, the extent of employee interchange and interaction, whether common supervision exists, the similarity of skills, duties and working conditions, whether a functional integration of operations exists, and whether there is a centralized control of labor relations, Presbyterian University Hospital, 313 NLRB 1341 (1994); Dezcon, Inc. 295 NLRB 109 (1989).

In its analysis of unit scope disputes, the Board looks first at the unit sought by the petitioner. And "if it is appropriate, our enquiry ends," Dezcon, Inc., *Supra* at 111. Thus, it must first be determined whether the unit sought by the Petitioner is appropriate, and if it is concluded that the unit is appropriate, there is no need to determine whether the unit proposed by the Employer (or any other unit) is more appropriate.

The evidence indicates that certain functions are centrally administered by Clarian. These include marketing, accreditation, accounting, purchasing, and human resources. Certain terms of employment are common to all Clarian employees, regardless of the facility at which they work. All employees are subject to the same employment policies described in a single employee handbook. All are paid according to a single wage plan, and all are eligible to receive the same fringe benefits and services. Personnel and labor policies are centrally administered by Clarian's Human Resources Department. Job vacancies are advertised by this Department among all Clarian facilities. Employees who are terminated after completing their probationary period can appeal their terminations. The appeal process begins with the employee's departmental manager and progresses to a review committee handled by Clarian's Human Resources Department. There is no evidence regarding the specific mechanics of this review process, however. Human Resources possesses the authority to challenge some disciplinary decisions of departmental managers or supervisors. However, the record does not reflect the frequency with which this authority is exercised, or explain in greater detail the relationship between the authority of departmental managers and that of Human Resources in the areas of hiring, discipline, and firing.

Employees in each classification possess similar skills and perform similar functions, whether they work at IU/Riley, Methodist, or other facilities. No evidence was adduced at hearing to indicate that the skills, duties or working conditions of the employees vary in any significant way, depending upon their work location.

While the Employer relies heavily upon Clarian's centralized administration to support its proposed four-hospital unit, the record indicates that the Clarian enterprise extends to numerous additional facilities which provide acute care services, and which employ members of the subject classifications, but which the Employer does not seek to include within its proposed unit.²⁴ The Employer does not seek an employer-wide skilled maintenance unit; rather, it seeks a unit comprised of three hospitals plus three employees Clarian subcontracts to a fourth, unrelated hospital. The undersigned finds the Employer's reliance upon Clarian's central administration as a foundation for its argument in support of its proposed unit inconsistent with its failure to seek an employer-wide unit.

The Employer's reliance upon St. Luke's Health System, Inc., 340 NLRB No. 139 (November 28, 2003), Stormont-Vail Healthcare, Inc., 340 NLRB No. 143 (November 28, 2003) and West Jersey Health System, 293 NLRB 749 (1989) is also misplaced. In St. Luke's Health System the petitioner sought a unit comprised of professional employees who worked at only one of the employer's 21 non-acute care clinics. The employer argued that only an employer-wide unit was appropriate. The Board agreed for several reasons. Each clinic enjoyed less autonomy than the hospitals involved herein. In St. Luke, the central Human Resource Department could veto disciplinary decisions of clinic managers as well as their hiring decisions. No comparable

²⁴ The record indicates that two Maintenance Technicians work at Beltway facilities, but it does not indicate whether other employees who occupy classifications discussed herein, also work at these facilities.

evidence exists in the case at hand. More significantly, there existed much greater employee interchange than exists between IU/Riley and Methodist. In any given year, 20% of all job classifications in the clinic's work force "floated" to locations away from their "base location." No such degree of interchange exists in the present case; nor does the Employer seek an employer-wide unit.

Again, in Stormont-Vail the employer sought an employer-wide unit. The petitioner sought a unit comprised of all registered nurses who worked at the employer's acute care hospital and at seven other buildings located within six blocks of the hospital, plus nurses who worked for a helicopter ambulance service owned by the employer and based in locations away from the main campus. The petitioner sought to exclude from the unit, however, nurses who worked at other acute care and non-acute care facilities which comprised the employer's regional medical system. The Board found that the petitioner's grouping of nurses did not enjoy a community of interest and that the employer-wide unit was appropriate. Unlike Stormont, the petitioner herein is not seeking a unit which includes selective clinical facilities in addition to acute care hospitals, while rejecting other clinics. Moreover, in Stormont there existed much greater functional integration than the record herein indicates at Clarian. For example, not only did the hospital and outlying clinics share a common human resource department, but also a centralized laundry service, lab work, warehousing of nonperishable supplies, housekeeping, ex-ray and ultrasound imaging, a retail pharmacy and cafeteria, plus an interoffice mail system. Unlike the case at hand, there was also a central "float pool" of licensed practical nurses and patient care technicians available to all locations.

Although the Board's decision in West Jersey Health System does not set forth all relevant facts, it found that only an employer-wide unit comprised of the employer's four hospitals was appropriate, rather than single hospital units. One of the distinguishing features in West Jersey is the lack of autonomy of each hospital. Although a management team headed each hospital, the team possessed limited authority only in the areas of budget preparation and administration, but not in respect to the day-to-day supervision of employees within each hospital. The day-to-day supervision of employees was handled by corporate departmental directors who were responsible for the operations of each department under their auspices, and who traveled among the hospitals. Such is not the case with Clarian. In addition, West Jersey cited substantially greater employee interchange than is present in the case at hand. And, unlike the employer in West Jersey, the Employer in the present case does not seek an employer-wide unit.

Contrary to these cases, in the case at hand each hospital is separately administered and operates with substantial autonomy. Each has a Chief Administrative Officer, Chief Medical Officer and Vice-President of Nursing. In addition, the functions of the hospitals have not been integrated to any significant extent. Only two areas of medical services have been consolidated between IU and Methodist hospitals: psychiatry and cardiology. Each hospital provides separate medical services in all other areas. Similarly, with the one exception of the 15 employees in the Radiological Services division of the Clinical Engineering Department, the functions performed by prospective unit members have not been integrated, either. Although a Facilities Director oversees all Facilities functions, each of the three hospitals has its own Facilities Manager, supervisors, and staff. The Facilities employees whose unit placement is at issue share no

common direct supervision. The supervisors employed at each hospital possess supervisory authority only over those Facilities employees who are assigned to work at their respective hospital.

Although there is one Director who oversees all functions of the Clinical Engineering Department, reporting to the Director are separate Operations Managers: one who supervises employees assigned to Riley and IU, and another who supervises only employees assigned to Methodist. Similarly, although there is one Clarian Director who oversees the Respiratory Care and Diagnostic Department, the functions of this department are separately managed at each hospital by three independent Managers. Only the Radiology Services division of Clinical Engineering has a single Manager who supervises employees who work both at Methodist and IU/Riley.²⁵ The Board has long recognized that certain factors such as common daily supervision have a greater impact upon creating a community of interest among employees than other factors such as common indirect supervision. Common daily supervision has a greater impact upon the creation of a community of interest than other factors because it has a direct impact upon employees' work lives, and employees with different supervisor may not necessarily share similar problems or concerns, D & L Transportation, Inc., 324 NLRB 160 (1997); Towne Ford Sales, 270 NLRB 311 (1984).

Permanent transfers of employees between IU/Riley and Methodist during the past four years have been few. Of the total 182 prospective unit members, only one such transfer occurred in 2000; two in 2001; one in 2002; two in 2003; one in 2004; and one transfer whose date is uncertain. Thus, in four years, only 4% of prospective unit members have been involved in permanent transfers between the petitioned unit and Methodist. In 2001 three employees were involuntarily transferred from the Facilities Department to the Clinical Engineering Department, but the record does not indicate if this transfer between departments also involved a transfer between hospitals. Thus, the degree of permanent interchange between prospective unit members who work at IU/Riley and those who work at Methodist has been negligible.

The extent to which prospective unit members employed at IU/Riley temporarily transferred to Methodist, and the degree of interchange between the two groups of employees is also minimal. Although there is general testimony that employees of the Facilities Department may work in a hospital other than the one to which they are assigned, the record contains no data. In respect to the Clinical Engineering Department, an Operations Manager testified that of the Department's current 60 employees, eight who are assigned to Riley and/or IU also provide services at Methodist; and two employees permanently assigned to Methodist also work at IU or Riley. This interchange therefore affects 17% of the Department's employees, but only 5% of the total workforce within the Employer's proposed unit. Moreover, the duration of this interchange is only known in respect to five of these employees: One Medical Equipment Repair Technician assigned to IU has been working at Methodist since approximately November 2003, due to the death of a Methodist Technician. The anticipated duration of this employee's continued substitution is not known. Two Clinical Engineering Equipment Control Technicians assigned to IU work one day a week at Methodist. A Biomedical Equipment II Technician and a

²⁵ This common supervision affects 15 employees of a potential unit of 182, or 8%.

Radiology Service Engineer who are both stationed at IU also spend approximately 30% of their time working at Methodist.²⁶ Thus, the interchange between prospective unit members who work at IU/Riley and those who work at Methodist is insubstantial, Mercy Health Corporation, 311 NLRB 367 (1993) (interchange of 50% and 100% deemed substantial); P. S. Elliott Services, Inc., 300 NLRB 1161 (1990) (interchange of 50% found to be "frequent and regular"); Magic Pan, Inc., 234 NLRB 1 (1977) (10% employee interchange among a unit of 80 – 90 employees insufficient to rebut appropriateness of single-facility presumption); Memorial Medical, 230 NLRB 976, 977 (1977) (interchange of 2 employees out of approximately 85 employees (or 2%), during the 6 to 10-month period prior to the hearing deemed negligible); Petrie Stores Corporation, 212 NLRB 130 (1974) (10% - 15% employee interchange per month found "high degree of interchange"); McDonald's, 192 NLRB 878 (1971) (1% of interchange per month found "minimal"); Marriott In-Flite Services, 192 NLRB 379 (1971) (transfers affecting 2.5% of total employees and 1.8% found insignificant).

In contrast, IU and Riley employees share greater common supervision and employee interchange. As mentioned above, employees of the Clinical Engineering Department who work at IU and Riley share common supervision in the person of an Operations Manager. In the Radiology Service division of Clinical Engineering, five Radiology Service Engineers who are assigned to IU also service Riley on a permanent basis. Likewise, the three employees in the Technician II – Medical Equipment Repair position who work at IU also service Riley. One Biomedical Technician III oversees the Biomedical Technician I and II's who work both at Riley and IU. Separate monthly staff meetings of employees of the Clinical Engineering Department are held for persons employed at IU/Riley and those employed at Methodist. In the Facilities Department, no Technician - Control Systems positions exist at Riley, and the six assigned to IU also work at Riley. HVAC Technicians assigned to IU occasionally work at Riley, and vice versa. Two Fire Systems Technicians assigned to IU also work at Riley on a permanent basis. Thus, there exists substantially more interchange and contact between prospective members of the bargaining unit who work at IU and Riley, than exists between these employees and those who work at Methodist.

Only two members of the two prospective bargaining units testified at hearing. Both employees occupy the Tech – Facilities Equipment position. One has worked for Indiana University over 22 years, and has occupied his current position for the past 3 ½ years. The other employee has worked at Riley Hospital in his current position approximately two years. Neither employee has ever worked at Methodist in his current position, nor has either ever received work assignments from a Methodist supervisor. Employees of the Facilities Department who work at IU and Riley can communicate with each other (and overhear each others' communications) by way of radios they carry. These radios do not include transmission to Methodist Hospital.

²⁶ In addition to the temporary transfer of employees between IU/Riley and Methodist, there is also some testimonial evidence that some employees assigned to each of the three hospitals also provide services to some of the "Beltway" facilities. The Employer does not contend however, that only an employer-wide unit is appropriate.

Lastly, IU and Riley are also geographically proximate, being only blocks apart, while Methodist is located nearly a mile away and must be accessed by an overhead tram system.

Since little functional integration exists between IU/Riley and Methodist hospitals; since employees who are assigned to IU and Riley share certain common supervision; experience substantial contact and interchange; share the same wages, benefits and working conditions; work in close geographic proximity; and since employees in each job classification possess similar skills and perform similar functions, it is concluded that skilled maintenance employees who are assigned to work at Riley Hospital and Indiana University Hospital share a sufficient community of interest to comprise a unit appropriate for purposes of collective-bargaining, Presbyterian University Hospital, Supra.²⁷ Employees who occupy job classifications which exist only at Methodist Hospital are excluded from this unit. Since the following positions exist only at Methodist Hospital, they are excluded from the unit: Dispatcher; Facility Engineer; Technician - Powerhouse, Waste Systems Operator, Design and Fabrication Machinist, Linac Service Engineer – Trainee, and the sole electrician who works at Methodist. Further, the three Radiological Service Engineers who work exclusively at Wishard Hospital are excluded from the bargaining unit. Also excluded are the two Maintenance Technicians who work exclusively at the Beltway facilities. In neither case does the evidence indicate that employees who work at Wishard or the Beltway facilities share a community of interest with employees within the unit found appropriate herein.

B. The Unit Placement of Disputed Positions

It is the Employer's position that persons employed within its Clinical Engineering, Radiology Services, and Respiratory Care and Diagnostic Departments at IU and Riley should be included within the skilled maintenance unit, while the Petitioner contends they lack a community of interest with skilled maintenance employees.

In determining an appropriate unit, the ultimate question is whether the employees share a sufficient community of interest to require their joinder within one unit, Alois Box Co., Inc., 326 NLRB 1177 (1998); Washington Palm, Inc., 314 NLRB 1122, 1127 (1994). In determining whether employees share such a community of interest, the Board weighs a variety of factors, including similarities in wages or method of compensation; similar hours of work; similar

²⁷ The Board's recent holding in Laboratory Corporation of America Holdings, 341 NLRB No. 140 (May 28, 2004), is clearly inapposite to the case at hand. There the Board found that a group of employees who worked in seven clinics did not share a community of interest apart from the employees who worked in the other 22 clinics which comprised an administrative division of the employer. The Board found that supervision of the seven clinics was in a state of flux; the employees had experienced different past and probably would experience different future supervision. In contrast, employees of IU and Riley have shared a long, stable history of shared supervision, employee interchange, and integration of operations. In Laboratory Corporation substantial employee interchange and contact also existed between the seven clinics and other clinics, which is absent between employees of Methodist Hospital and IU/Riley. Lastly, the Board found that the seven clinics did not form a coherent geographic grouping, unlike IU and Riley which have been located on the same campus for 80 years.

employment benefits; similar supervision; the degree of similar or dissimilar qualifications, training, and skills; similarities in job functions; the amount of working time spent away from the facility; the integration of work functions; the degree of interchange between employees as well as the degree of employee contact; and the history of bargaining, NLRB v. Action Automotive, Inc., 469 U.S. 490, 494-97 (1985); Kalamazoo Paper Box Corp., 136 NLRB 134, 137 (1962).

In regard to skilled maintenance units in the healthcare industry, the Board in its Second Notice of Proposed Rule Making described skilled maintenance employees as employees who deal with highly complex and sophisticated systems and equipment, and who are generally engaged in the operation, maintenance, and repair of a hospital's physical plant systems such as heating, ventilation, air-conditioning, refrigeration, electrical, plumbing, and mechanical, as well as their trainees, helpers, and assistants, 29 CFR Part 103, 54 Federal Register No. 76, 284 NLRB 1556-1562. The Board also noted that skilled maintenance classifications typically require completion of high school, post-secondary training such as vocational or trade school in a specialty field, formal or informal apprenticeship programs; or an associate or baccalaureate degree, and also require continued education in technological changes in building maintenance, Jewish Hospital of St. Louis, 305 NLRB 955, 956 (1991).

The Board identified six factors which distinguish skilled maintenance employees from other employees. These factors are essentially the same factors used to identify a community of interest among employees, Kalamazoo Paper Box Corp., *Supra*. They include: functions and skill level; education, licensing and training; supervision; wages, hours, and working conditions; interaction with other employees; and labor market and career path, Second Notice of Proposed Rule Making, *Supra*, 1556-1559. Further, the Board has held that a distinguishing feature of skilled maintenance employees is that their work tasks involve equipment and systems rather than direct patient care tasks, Jewish Hospital of St. Louis, 305 NLRB 955 (1991). The Board has placed certain classifications of employees in a skilled maintenance unit even though they have been administratively placed in a different department and/or have different supervision by their employer, The Toledo Hospital, 312 NLRB 652 (1993); San Juan Regional Medical Center, 307 NLRB 117 (1992); Jewish Hospital of St. Louis, *Supra*.

The parties stipulated that the following classifications which exist at IU and Riley Hospitals properly belong with a skilled maintenance unit: Maintenance Technician, Technician – Control Systems, Tech – Facilities Equipment, HVAC Technician, Electrician, Technician – Fire Systems, and Locksmith. A comparison of the skills and educational levels, the functions performed, and wage levels of the positions within the Clinical Engineering Department which exist at IU and Riley, indicate that with the exception of the Technician – Clinical Engineering Equipment Control position, the following positions share a community of interest with members of the skilled maintenance unit.

The Medical Equipment Repair Technicians repair a variety of equipment of varying degrees of complexity. Although no specific educational qualifications are required for the positions, the positions do require a knowledge of electronics, electromechanics, and ability to interpret blueprints and schematics. These areas of knowledge are not unlike those utilized by electricians, HVAC Technicians and other members of the skilled maintenance unit.

An associate degree in Electronics Technology, Electrical Engineering Technology, or Biomedical Electronics is preferred for all of the Biomedical Equipment Technician positions, and the Board has consistently recognized that the educational requirements and complexity of functions performed by such positions make them appropriate members of skilled maintenance units, San Juan Regional Medical Center, 307 NLRB 117 (1992); Toledo Hospital, 312 NLRB 652 (1993). In addition, in the case at hand employees in these positions earn wages in pay grades comparable to those in the Facilities Department whom the parties agree are skilled maintenance. In Toledo Hospital, the Board included Biomedical Technicians in a skilled maintenance unit even though, like the case at hand, they worked in a department different than the department which housed traditional craftsmen. The Board concluded that the two groups shared a community of interest, however, because they both worked on complex, sophisticated equipment; earned comparable wages; possessed comparable skill levels; and had occasional contact with each other. In San Juan Medical Center the Board included Biomedical Technicians in a skilled maintenance unit although they had more education; earned a higher wage; worked different hours than maintenance mechanics; and had little interaction and no interchange with other plant operations employees, *Id.*

Similarly, the Linac Service Engineer and the Radiological Service Engineers repair sophisticated machinery; possess an associate degree or other training in technical fields, and earn wages comparable to the craftsmen included in the skilled maintenance unit.

Accordingly, it is concluded that the positions of Linac Service Engineer, Technician II – Medical Equipment Repair, Technician – Medical Equipment Repair, Tech – Biomedical Equipment I, Tech – Biomedical Equipment II, Tech – Biomedical Equipment III, and Radiological Service Engineer who are employed at IU and Riley Hospitals shall be included in the unit found appropriate herein.

The position of Technician – Clinical Engineering Equipment Control, however, shall be excluded from the unit since the primary function of employees in this position is not that of the maintenance or repair of equipment, but of tracking and distributing equipment. Their primary function is therefore more similar to an inventory control function than a maintenance and repair function. In addition, no special educational coursework or experience is required for this position. In Toledo Hospital, 312 NLRB 652, 655 (1993), the Board affirmed the Regional Director's decision to exclude Utilization Technicians from a skilled trades unit. Those employees, whose duties are strikingly similar to the Equipment Control Technicians in this case, were responsible for low level maintenance, inventory and the supply of medical equipment. And like the employees at issue, the Utilization Technician positions required no specialized education or training.

The Respiratory Care Equipment Technicians shall also be excluded from the skilled maintenance unit because these positions also require little specialized education or skill; they perform only cleaning and minor maintenance functions on non-complex equipment; they work in a clinical department; and their wages are considerably lower than other classifications in the skilled maintenance unit. In Ingalls Memorial Hospital, 309 NLRB 393, 399 (1992) the respiratory equipment technician position performed duties which are very similar to those performed by Clarian's Technicians. The Board found that the positions lacked the necessary

skill and technical ability to satisfy the requirements for inclusion within a skilled maintenance unit.

V. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned, among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the unit who are in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are former unit employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by the International Union of Operating Engineers, Local Union No. 103, AFL-CIO.

VI. NOTICES OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of the election notices unless it notifies the Regional office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices, Club Demonstration Services, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

VII. LIST OF VOTERS

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear,

Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is directed that 2 copies of an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the undersigned within 7 days from the date of this Decision. North Macon Health Care Facility, 315 NLRB 359 (1994). The undersigned shall make this list available to all parties to the election. In order to be timely filed, such list must be received in Region 25's Office, Room 238, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Indianapolis, Indiana 46204-1577, on or before **June 16, 2004**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

VIII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099-14th Street. N.W., Washington, DC 20570. This request must be received by the Board in Washington by June 23, 2004 .

SIGNED at Indianapolis, Indiana, this 9th day of June, 2004.

/s/ Rik Lineback

Rik Lineback
Regional Director
National Labor Relations Board
Region 25
Room 238, Minton-Capehart Building
575 North Pennsylvania Street
Indianapolis, IN 46204-1577

RGC/bjb/ar

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